1454.

SUPREME COURT OF THE UNITED STATES.

No. 115.

PIERRE A. BERTHOLD AND AL., PL'FFS IN ER.,

vs.

JAMES McDONALD AND MARY McREE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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Afterwards, on the 24th day of September, in the year 1855, said writ of error was returned into the office of the clerk of said supreme court, with a transcript of the record and proceedings of said land court in said case thereto attached, and upon said writ is endorsed the following return:

Return on Writ of Error.

STATE OF MISSOURI,
County of St. Louis, ss:

I, Charles A. Mantz, clerk of the St. Louis land court within and for the county aforesaid, in obedience to the command of the within writ, herewith transmit a full, true, and complete transcript of the record and proceeedings in the case of Piere A. Berthold, Charles P. Chouteau, Charles F. F. De Montholon, Mary V. De Montholon, Isabella De Mun, Eliza H. Gratiot, William Henry Child, Louise Kingsbury, Jules C. Kingsbury, Charles H. Gratiot, Edward H. Gratiot, Stephen H. Gratiot, Adelle H. Washburne, and her husband, Elihu B. Washburne, and Thomas Child, plaintiffs, against James McDonald and Mary McCree, defendants, as fully as the same remains in my office.

In testimony whereof, I hereto set my hand and affix the seal of the St. Louis land court, at office in St. Louis, this 21st day of September, A. D. 1855.

[SEAL.]

CHARLES A. MONTZ, *Ck.*

Said transcript of record and proceedings is as follows:

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on the seventeenth day of February, in the year of our Lord one thousand eight hundred and fifty-four, there was filed in the office of the clerk of the St. Louis land court a petition which is in the words and figures following, to wit:

Petition.

PIERRE A. BERTHOLD, CHARLES P. CHOUTEAU, Charles F. F. De Montholon, Mary V. De Montholon, Isabella D. Mun, Eliza H. Gratiot, William Henry Child, Louise A. Kingsbury, and Jules C. Kingsbury, plaintiffs,
vs.
JAMES MCDONALD, defendant.

In the St. Louis land court, March term, 1854.

Plaintiffs state that on the thirteenth day of February, eighteen

hundred and fifty-four, they were entitled to the possession of a certain tract of land, containing eighty arpens, situate in the Prairie des Noyers, in said county of St. Louis, being United States survey numbered twelve hundred and eighty-six and twelve hundred and eighty-nine; and being so entitled to the possession thereof the defendants afterwards, on the 14th day of February, eighteen hundred and fifty-four, entered into a certain part of said premises, to wit, about eighteen acres, lying at the eastern end of said tract, and bounded on the east, north, and south by the eastern, northern, and southern lines of said tract, and west by a point of said tract in the possession of one Adam Schafer, and unlawfully withholds from plaintiffs the possession of said part of said tract, to their damage one hundred dollars, for which, and the possession of said premises, plaintiffs ask judgment.

Piere A. Berthold, Charles P. Chouteau, Charles F. F. De Montholon, Mary V. De Montholon, Isabella De Mun, by their attorneys, C. D. Drake and R. M. Field; Eliza H. Gratiot and William Henry Child, by their next friend, Charles P. Chouteau; Louise A. Kingsbury and Jules C. Kingsbury, by their guardian, John B. Sarpy.

Piere A. Berthold, one of the plaintiffs, makes oath and says that he believes the above petition and the matters therein as stated are true.

P. A. BERTHOLD.

Sworn to and subscribed before me this 17th day of February, 1854.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal

A. CHADWICK,
Notary Public.

Summons.

The State of Missouri, to the sheriff of St. Louis county, greeting:

We command you to summons James McDonald to appear before the judge of our St. Louis land court on the first day of the next term thereof, to be held at the city of St. Louis, within and for the county of St. Louis, on the first Monday of March next, then and there to answer the complaint of Piere A. Berthold, Charles P. Chouteau, Charles F. F. De Montholon, Mary V. De Montholon, Isabella De Mun, Eliza H. Cratiot, William Henry Child, Louise A. Kingsbury, and Jules C. Kingsbury, as set forth in the annexed petition, and have you then and there this writ.

Witness Charles A. Mantz, clerk of our said court, with the

seal of said court hereto affixed, at office in the city of St. Louis, this 17th day of February, in the year of our Lord 1854.

CHARLES A. MANTZ,
Clerk.

Sheriff's Return.

Executed this writ, in the county of St. Louis, on the 18th day of February, 1854, by delivering a copy of it and the petition, as furnished by the clerk, to James McDonald, the defendant.

JOHN M. WIMER, *Sheriff.*
By J. H. DOUGLAS, *Deputy.*

And afterwards the following proceedings were had in this cause, to wit:

WEDNESDAY, *March* 15*th*, 1854.

PIERE A. BERTHOLD, C. P. CHOUTEAU, et al.
vs.
JAMES McDONALD.

On motion, Mary McRee is admitted co-defendant in this cause, as landlady.

And afterwards the following further proceedings were had in this cause, to wit:

In the St. Louis land court, March term, 1854.

FRIDAY, *April* 7*th*, 1854.

J. A. BERTHOLD and al.
vs.
JAMES McDONALD.

Demurrer.

The defendant demurs to the plaintiff's petition, because—

1. It does not state facts sufficient to constitute a cause of action.
2. It does not state or show how or in what way the plaintiffs became or are entitled to the possession of the land sued for in said petition.
3. It does not state or show what the rights or title of the plaintiffs to said land is or how the same was derived.
4. It is too vague, uncertain, and indefinite.

GIBSON & DAYTON,
Deft's Att'ys.

And afterwards the following further proceedings were had in this cause, to wit:

WEDNESDAY, *April* 12*th*, 1854.

PIERE A. BERTHOLD and al.
vs.
JAMES MCDONALD and MARY MCREE.

Now at this day come the said parties, by their attorneys, and submit the demurrer herein to plaintiffs' petition to the court, and the court not being fully advised of and concerning the premises, takes time to consider therein.

And afterwards the following further proceedings were had in this cause, to wit:

THURSDAY, *April* 13*th*, 1854.

PIERE A. BERTHOLD and al.
vs.
JAMES MCDONALD and MARY MCREE.

Now at this day come again the said parties, by their attorneys, and the court being fully advised of and concerning the demurrer to the plaintiffs' petition, doth order and adjudge that the same be overruled. And on the sixth day of June, 1854, the defendant filed an answer, which answer is in the words and figures following:

Answer.

PIERE A. BERTHOLD & others, plaintiffs,
vs.
MARY MCREE & JAMES MCDONALD, defendants.

In the St. Louis land court. March term, 1854.

Defendants deny that on the thirteenth day of February, eighteen hundred and fifty-four, the plaintiffs were or since have been or now are entitled to the possession of the tract of land described in the petition, or any part thereof. Defendants deny that they have or that either of them has unlawfully withheld, or that they do now, or that either of them does unlawfully withhold from the plaintiffs the possession of said tract, or any part thereof.

Defendants aver that neither the plaintiffs or either of them, nor any ancestor, predecessor, or grantor of the plaintiffs, or either of them, were or was seized or possessed of the tracts of land described in the petition, or any part thereof, within twenty years next before the commencement of this suit.

Defendants aver that they and those under whom they claim had for more than twenty years next before the commencement of this suit the possession of the tract of land in the said petition mentioned claiming said land and holding such possession adversely to the plaintiffs and all persons under whom said plaintiffs claim.

Defendants aver that at the time of the commencement of this suit the said defendant, James McDonald, as tenant of the said defendant, Mary McRee, owns and still is entitled in law and equity to the possession of the tract of land secondly in said petition mentioned.

MARY MACREE.

STATE OF MISSOURI,
County of St. Louis, ss:

Mary McRee, one of the defendants above named, makes oath and says she believes the foregoing answer and the matters therein as stated are true. Sworn to and subscribed before me this 18th day of May, A. D. 1854.

LOUIS DU BREUIL,
Justice of the Peace of St. Louis County.

STATE OF MISSOURI,
County of St. Louis, ss:

Charles Gibson, one of the defendant's attorneys, being sworn, says he believes the matters in the above answer as therein stated are true.

C. GIBSON.

Sworn to and subscribed before me this 6th day of June, A. D. 1854.

C. A. MANTZ, *Clerk.*

And afterwards the following further proceedings were had in this cause, to wit:

Death of one of plaintiffs suggested—E. H. Gratiot. Parties made plff.

THURSDAY, *November* 16*th*, 1854.

PIERE A. BERTHOLD, CHARLES P. CHOUTEAU, Charles F. F. de Montholon, Mary V. de Montholon, Isabella de Munn, Eliza H. Gratiot, William Henry Child, Louisa A. Kingsbury, and Jules Kingsbury,
vs.
JAMES MCDONALD & MARY MCREE.

Now at this day come said plaintiffs' attorneys, and suggest the death of one of said plaintiffs, Eliza H. Gratiot, and by leave Charles H. Gratiot, Edward H. Gratiot, Henry Gratiot, Stephen H. Gratiot, Adele Washburne and her husband, Elihu B. Wash-

burne, heirs-at-law of said Eliza H. Gratiot, are made parties plaintiff. Thomas Child is also made a party plaintiff.

And afterwards the following further proceedings were had in this cause, to wit:

Jury.

MONDAY, *November* 20*th*, 1854.

PIERE A. BERTHOLD, CHARLES P. CHOUTEAU, Charles F. F. de Montholon, Mary V. de Montholon, Isabella de Munn, William Henry Child, Louisa A. Kingsbury, Jules C. Kingsbury, Charles H. Gratiot, Edward H. Gratiot, Stephen H. Gratiot, Adele H. Washburne and her husband, Elihu B. Washburne, and Thomas Child,
vs.
JAMES McDONALD & MARY McREE. } Ejectment.

Now at this day comes said plaintiff, William Henry Child, by his next friend, Charles P. Chouteau, and the other plaintiffs, and the defendants by their respective attorneys, and thereupon come the following jury, to wit: Patrick Croake, Thomas Burgess, David McManus, Theodore Miller, Thomas Russell, Joseph Woodman, William Williamson, Z. T. Simmons, John Hartshorn, Hugh Ferguson, Francis Derroger, Zeno Mackay, twelve good and lawful men, who being duly elected, tried, and sworn well and truly to try the issues joined between the parties, and a true verdict render according to the evidence, therefore the trial of the cause progressed, but not being fully terminated, the cause is continued until to-morrow morning.

And afterwards the following further proceedings were had in this cause, to wit:

TUESDAY, *November* 21*st*, 1854.

PIERE A. BERTHOLD, CHARLES P. CHOUTEAU, Charles F. F. de Montholon, Mary V. de Montholon, Isabella de Munn, William Henry Child, Louise A. Kingsbury, Jules C. Kingsbury, Charles H. Gratiot, Edward H. Gratiot, Stephen H. Gratiot, Adele H. Washburne, and Thomas Child,
vs.
JAMES McDONALD and MARY McREE.

Now at this day comes again said minor plaintiff by his next friend, and also come the other plaintiffs and the defendants by their attorneys, and also come the jury heretofore sworn in this

cause; therefore the trial progressed; but not being fully terminated, it is continued until to-morrow morning.

And afterwards the following further proceedings were had in this cause, to wit:

WEDNESDAY, *November* 22*d*, 1854.

PIERE A. BERTHOLD, CHARLES P. CHOUTEAU, Charles F. F. de Montholon, Mary V. de Montholon, Isabella de Munn, William Henry Child, Louise A. Kingsbury, Jules C. Kingsbury, Charles H. Gratiot, Edward H. Gratiot, Stephen H. Gratiot, Adele H. Washburne, and her husband, Elihu B. Washburne, and Thomas Child,
vs.
JAMES McDONALD & MARY McREE.

Now at this day come again said parties as aforesaid, said minor by his next friend, and the other parties plaintiffs and defendants by their respective attorneys, and also come the jury heretofore sworn in this cause; therefore the trial progressed; but not being fully terminated, it is continued until to-morrow morning.

And afterwards the following further proceedings were had in this cause, to wit:

Verdict and Judgment.

THURSDAY, *November* 23*d*, 1854.

PIERE A. BERTHOLD, CHARLES P. CHOUTEAU, Charles F. F. de Montholon, Mary V. de Montholon, Isabella de Munn, William Henry Child, Louise A. Kingsbury, Jules C. Kingsbury, Charles H. Gratiot, Edward H. Gratiot, Stephen H. Gratiot, Adele H. Washburne, and her husband, Elihu B. Washburne, and Thomas Child,
vs.
JAMES McDONALD & MARY McREE.
Ejectment.

Now at this day come again said minor plaintiff by his next friend, and the other plaintiffs and the defendants by their respective attorneys, and also come the jury heretofore sworn in this cause; therefore the trial of this cause progressed, and being fully terminated, the jury aforesaid, upon their oaths aforesaid, find for the defendants in this case. It is therefore, upon the finding of the jury as aforesaid, ordered and adjudged by the court that the plaintiffs take nothing of their said suit, but that the defendants

go hence without day and recover of said plaintiffs their costs and charges in this behalf expended, and have thereof execution.

And afterwards the following further proceedings were had in this cause, to wit:

SATURDAY, *November 25th*, 1854.

PIERE A. BERTHOLD, CHARLES P. CHOUTEAU, Charles F. F. de Montholon, Mary V. de Montholon, Isabella de Munn, William Henry Child, Louisa A. Kingsbury, Jules C. Kingsbury, Charles H. Gratiot, Edward H. Gratiot, Stephen H. Gratiot, Adele H. Washburne and her husband, Elihu B. Washburne, and Thomas Child,
vs.
JAMES McDONALD & MARY McREE.

Motion for a new trial.

And afterwards, on Wednesday, January 3d, 1855, the following proceedings were had in this cause, to wit:

P. A. BERTHOLD, C. P. CHOUTEAU & al.
vs.
JAMES McDONALD & MARY McREE.

The motion of said plaintiffs for a new trial continued.

And afterwards the following further proceedings were had in this cause, to wit:

THURSDAY, *January* 11, 1855.

PIERE A. BERTHOLD, CHARLES P. CHOUTEAU, Charles F. F. de Montholon, Mary V. de Montholon, Isabella de Mun, Charles H. Gratiot, Edward H. Gratiot, Henry Gratiot, Stephen H. Gratiot, Adele Washburne and her husband, Elihu B. Washburne, heirs-at-law of Eliza H. Gratiot, deceased, William Henry Child, Louise A. Kingsbury, and Jules C. Kingsbury, and Thomas Child,
vs.
JAMES McDONALD & MARY McREE.

And now at this day came said plaintiffs by their attorneys, and move the court to grant them further time, until the first day of the next term of this court, to present their bill of exceptions in this cause, for the reasons set forth in the affidavit of Charles D. Drake filed with said motion; which being heard and by the court

understood, it is ordered that the same be sustained, and that said plaintiffs have time until the first day of the next term of this court to present their said bill of exceptions.

SATURDAY, *January* 13*th*, 1855.

PIERE A. BERTHOLD, C. P. CHOUTEAU, & als.
vs.
JAMES McDONALD and MARY McREE.

Bill of exceptions presented to the court according to leave at last term. And on Friday, April the 6th, 1855, the plaintiffs filed their bill of exceptions, which is in the words and figures following:

Bill of Exceptions.

PIERE A. BERTHOLD & others
vs.
JAMES McDONALD and MARY McREE.

Bill of exceptions filed, which is in the words following, to wit:

PIERE A. BERTHOLD & others
vs.
JAMES McDONALD and MARY McREE.
In the St. Louis land court. October term, 1854.

Be it remembered that on the trial of this cause the plaintiffs gave in evidence the following documents, to wit:

1. A certified copy from the books of the United States recorder of land titles in Missouri of a claim of and confirmation to Charles Gratiot, in the words and figures following, to wit:

Confirmation to Chs. Gratiot.

To the recorder of land claims for the territory of Louisiana:

Take notice that Charles Gratiot claims the following tracts of land, to wit: 2 arpens front by forty in depth, situated at the Barriere des Noyers, district of St. Louis *of St. Louis*, as assignee of Jeanette Flore, to whom the same originally belonged. See Book of Registry, No. 2, page 77, for certificate of survey. St. Louis, June 25th, 1808.

CHARLES GRATIOT.

JEANETTE: Je me suis exporés transporté de mon domicile sis dans ce susdit poste St. Louis, sur une terre a elle appartenante de deux arpens de large sur quarente autres de long partie labourie partie en prische située dans la même prairie que cy-devant et tenant immediatement au domaine au Ray et de l'autre côté a celle du nommé Charles Ray, et des deux autres comme cy devant pour l'arpenter avec mon instrument, &c^{a}., à l'execution de quâ me faisant accompagner de la ditte proprietaire et du dit Chs. Ray

vasin le plus immediat pour me servir de témoin et mindiquer exactement la veritable situation de leurs concessions respectives, je suis parvenu et l'ai fait bomer en ma presence avec des prienes a ses quatres extremities aprés l'avoir mesurée sur ces lignes de largeur et longuer. Jouttes deuse premieres paralleles c'est a dîre de largeur vout comme cy-devant ainsi comme les deux autres de longeuer avec les memes compensations inclinaisons, &c^{a}., ainsi je l'atteste par mouseing et par l'avoir examiné de tous les proprietaires susnommés dans ce moment avec l'aprobature de mon dit Sieur Don Emanuel Perez dans la chambre du Governement, pour se servir mutuellement de temoins et affirmir le fait les uns par leurs seings les autres par leurs declarations, à defaut de savoir signer en presence de Monsieur Don Emanuel Perez, capitaine du battalion de Louisiane, et lieutenant governeur commandant ence poste afin d'approveur, confirmer et ratifier ainsi que par mon seing en la qualitie de lieutenant gouverneur avec la quelle il est meme du même pouvoir de conceder les processions accordées par les autres commandants des antecesseurs et specifiées dans ce corps de cadastre que je remets contenant dix pages ecutes celle cy inclusivement aux archives de ce government pour y etre conservé a perpetuite et servir aux besoins sureties authenticités et temoignage de tout ce qui y est exposé. A St. Louis, le Aoust, mille sept cent quatre-vingt-huit.

PRE. CHOUTEAU,
MOTARD.

Sachent tous ceux qui ces presentes verrant que moi, Jeanette Flore, demeurante en la ville et district de St. Louis, dans la Louisiana, et en presence de temoins, reconnais avoir ce jourd'hui, rendu, cedé, quitté, delaissé, abandonné, et transporté, et promets garantir de tous troubles, dettes, donaires, hypotheques, evictions, substitutions, et autres empechments generalement quelconques à Charles Gratiot ecuyer resident en la ditte ville savoir une terre siuée ce la Prairie a Denoyers dans le dit district contenant deux arpens de pont sur quarante de profondeur tenant de trois cotés aux terres vacantes, et d'un coté à Charles Ray, ainsi qu'il est eventuriné au livre terrein vesté entre les meins d'Antoine Soulard ecuyer arpenteur du dit district la quelle terre m'a été concedée par Mr. Manuel Peres, cy-devant lieutenant governeur de la partie occedentale des Illinois en date du mois d'Aoust, mil sept cent quatre-vingt-huit, la vendant au dit Charles Gratiot, pour et moyennant le prix et somme de quarante piastres que je reconnais avoir recu comptant et à ma satisfaction des mains du dit Sieur Charles Gratiot, et dont parces mêmes presentes je le tiens quitte et decharge comere de choses a eux appartenante et sans que meshais executeurs ou administrateurs puissent rappeler ni contrevenir a la teneur du presentes par moi passées en ce jour promettant, &c., obligeant, &c., renouceint, &c. En foi de quoi ne sachant signer

j'ai fait ma marque ordinaire en presence de temoins a St. Louis, district cy-dessus ce onze Juin, de l'année de notre Seigneur mil huit cent cinq, et la vingt-neuvieme de l'independence des Etats Unis d'Amerique.

Marque de
JEANE × FLORE.

Signé, scellé, et delivré en presence de—
M. P. LEDUC,
JEREH. CONNER.

LOUISIANA TERRITORY,
St. Louis District.

December third, eighteen hundred and five, personally came before the subscriber, one of the justices of the court of common pleas of the district aforesaid, came personally the within-named Jeannette Flore, and acknowledged the within instrument of writing to be her act and deed for the purpose therein mentioned, and to be recorded. In witness whereof, I have hereunto set my hand and seal the day and year above written.

D. DELANAY, [SEAL.]

DISTRICT OF ST. LOUIS, *ss:*

Recorded book A, pages 197 and following, this third day of December, in the year of our Lord one thousand eight hundred and five. M. P. LE DUC.

See record book D, ps. 233, 234, and 235.

TUESDAY, *November 19th*, 1811.

Board met. Present, John B. C. Lucas, Clement B. Penrose, and Frederick Bates, commissioners.

Charles Gratiot, assignee of Jeanette Flore, claiming 2 by 40 arpens of land situate Prairie des Noyers, district of St. Louis, produces a report of survey made in 1788 signed Pre. Chouteau and Motard, record of a transfer from Jeanette to claimant, dated 11th of June, 1805.

The board grant to Charles Gratiot 2 arpens by forty of land under the provisions of 2d section of the act of Congress entitled an act respecting claims to land, and passed 3d of March, 1807, and order that the same be surveyed conformbly to his possession—survey at expense of claimant. Board adjourned until to-morrow morning, nine o'clock a. m.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERICK BATES.

See commissioners' minutes, book No. 5, ps. 423, 424, 425, and 427.

Louisiana.—Commissioners' certificate No. 1286, Nov. 19th, 1811.

We, the undersigned commissioners for ascertaining and adjusting the titles and claims to land in the territory of Louisiana, have decided that Charles Gratiot, claiming under Jeanette Flore, original claimant, is entitled to a patent under the provisions of the 2d section of the act of Congress entitled, "An act respecting claims to land in the territories of Orleans and Louisiana," passed the 3d of March, 1807, for two by forty arpens of land situate in the district of St. Louis, Barriere des Noyers, and order that the same be surveyed conformably to his possession, by virtue of ten consecutive years, possession prior to the 20th of December, 1803.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERICK BATES.

See original on file in U. S. recorder's office.

OFFICE OF RECORDER OF LAND TITLES,
ST. LOUIS, *June 3d*, 1853.

I certify that the foregoing is a complete and correct transcript from the books, records, files, plates, and documents in this office of the claim of Charles Gratiot, under Jeanette Flore, to two by 40 arpens of land situate in the district of St. Louis, Prairie des Noyers.

ADOLPH RENARD,
U. S. Recorder of land titles in the State of Missouri.

2. A certified copy of survey No. 1286 and 1289, in the words and figures following, to wit:

Surveys No. 1286 *and* 1289.

Surveys No 1286 and 1289. Plat and description of the survey of a tract of sixty-seven acres and seventy-hundredths of an acre of land, situated in the St. Louis Prairie des Noyers fields, in township forty-five, north of the base line, range seven east of the fifth principal meridian, in the State of Missouri, executed in the month of October, eighteen hundred and thirty-eight, by Joseph C. Brown, deputy surveyor, under his contract with the surveyor of the public lands in the States of Illinois and Missouri, dated the fifteenth of September, eighteen hundred and thirty-five. This being the lot of two by forty arpens surveyed in the month of August, seventeen hundred and eighty-eight, by Piere Chouteau, Jr., Jeanette, confirmed to Charles Gratiot, assignee of Jeanette Flore, "on the nineteenth of November, eighteen hundred and eleven, by the board of commissioners appointed under the act of Congress of the second of March, eighteen hundred and five, entitled an act for ascertaining and adjusting titles and claims to land within the territory of Orleans and the district of Louisiana," (commissioners' certificate

No. 1286.) It was also confirmed by the said board to Jeanette, a free negro woman, on the twentieth of November, eighteen hundred and eleven, under their certificate, No. 1289, (see American State Papers, vol. 2, page 602, Duff Green's edition,) and the extent and boundaries of this lot were proven on the thirteenth of April, eighteen hundred and twenty-five, by "Susanne Jeanette, a colored woman," before Theodore Hunt, United States recorder of land titles for the State of Missouri, under the provisions of the act of Congress of the twenty-sixth of May, eighteen hundred and twenty-four, entitled "An act supplementary to an act passed on the thirteenth day of June, one thousand eight hundred and twelve, entitled 'An act making further provision forsettling the claims to land in the territory of Missouri.'"

N. B. See, in relation to the double confirmation of this claim by the old board, the note at the end of the following description.

T. 45 N. R., 1 east of 5th pl. M'n.

[For plat, see original, page 20.]

Description.

Begin at a line stone twenty inches long, twelve inches wide, and six inches thick, set ten inches into the ground, and marked with a cross on the top, the southwest corner of this lot, and the northwest corner of the lot of Charles Roy's legal representatives, survey number one thousand five hundred and twenty-one, on the eastern boundary of survey numbered two thousand and thirty-seven, in the name of Charles Gratiot; thence north nine degrees and thirty minutes east along the western boundary of this lot, and *and* the eastern boundary of Charles Gratiot's survey at five chains and eighty-three and one-third links a post, the northwest corner of this lot and of the common fields of Prairie des Noyers, from which a pin oak, three inches in diameter, bears south twenty-seven degrees east sixty-three links, and a hickory, three inches in diameter bears north sixty-four degrees west forty-nine and a half links distant; thence south eighty-three degrees east, along the northern boundary of this lot, which is also the northern boundary of the common fields of Prairie des Noyers, at forty-five chains a road leading northeastward to St. Louis at forty-eight chains and seventy links, the western edge of a shallow pond three chains wide on this line, at seventy-eight chains and fifty links a branch ten links wide runs northward, at one hundred and twelve chains and sixty-six links an old stone; at one hundred and sixteen chains and eighty-seven links a lime stone fourteen inches long, thirteen inches wide, and three and a half inches thick, set eleven inches into the ground, and marked with a cross on the top, the northeast corner of this lot and the common fields of the Prairie des Noyers; thence south

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thence south

nine degrees and thirty minutes west along the eastern boundary of this lot, at five chains and seventy-seven links, a lime stone eighteen inches long, thirteen inches wide, and three inches thick, set nine inches into the ground, and marked with a cross on the top the southeast corner of this lot, and the northeast corner of Charles Roy's legal representatives' survey; thence north eighty-three degrees west, along the southern boundary of the lot of Charles Roy, at three chains and ninety-three links, an old stone, at thirty-eight chains and thirty links a branch runs northward, at thirty-nine chains the same branch, at forty-one chains and fifty links the same branch twelve links wide runs northward, at seventy-five chains and fifty links a road leading from St. Louis southwestward to Manchester, at one hundred sixteen chains and eighty-five links the beginning corner.

NOTE.—On the 19th of November, 1811, Charles Gratiot, assignee of Jeanette Flore, claimed two forty arpens of land in the Prairie des Noyers common-fields. He produced, in support of his claim, a report signed by Antoine Soulard, surveyor general of Louisiana Territory, of the survey of the tract in 1788 by Preire Chouteau, as recorded and platted on page 220 of book B, in the recorder's office, and a record of a deed (page 235 of book D) of the sale of the land by Jeamette to Gratiot, of the 11th of June, 1805, in which its boundaries are correctly described. The board confirmed it on the said 19th of November, 1811, as per certificate No. 1286. Commissioners' minutes, No. 5, page 424.

On the 20th of November, 1811, Jeannette, a free negro woman, claimed 80 arpens of land, situated in the Barriere des Noyers, and produced a report of the survey of the same by Pierre Chouteau in 1788. No other testimony adduced; granted on the same day, under certificate No. 1289, according to possession. Commissioners' minutes, No. 5, page 436. See for both certificates American State Papers, vol. II, page 602, Duff Green edition, 1834.

Inasmuch as all the lots in the common-fields of Prairie des Noyers are properly connected by the survey of P. Chouteau in 1788, and neither of the above certificates can apply to the tract of Jeannette Flore of half an arpent in the same common-fields, and there is only a lot of two arpens in the name of Jeannette, there can be no doubt that the confirmations under certificates No. 1286 and 1289 apply to the same tract.

SURVEYOR'S OFFICE,
St. Louis, 27th of May, 1846.

The foregoing plat and description of the surveys numbered one thousand two hundred and eighty-six and one thousand two hundred and eighty-nine, are this day approved, as recorded on pages one hundred and eighty-seven and one hundred and eighty-eight of this book. (Signed) F. R. CONWAY,
Of the Public Lands in the States of Illinois and Missouri.

Statement relative to the interference (12.07 acres) of survey No. 3125 of the common of St. Louis with surveys No. 1286 and 1289, of Jeanette, a free negro woman, made in compliance with the instructions of the Commiss'r of the General Land Office to the surveyor general of the 18th April, 1846.

Survey No. 3125, common of St. Louis. This claim is founded upon a set of regulations for the keeping and repair of the bridges and streets of the town of St. Louis and of the enclosure of the commons, signed by several inhabitants of the post of St. Louis and the commander in chief, lieutenant governor of the western part of the Spanish province of Illinois, Don Francisco Cruzat, dated 29th September, 1782. Notice of claim and record of said set of regulations. Survey of the commons to the amount of 4293 arpens by James Mackay, deputy surveyor, the return of which was certified by Antoine Soulard, surveyor general of the Territory of Louisiana, on the 27th of February, 1806. See for the record of those documents pages 486, 487, and 488 of book "B," in the office of the recorder of land titles. The claim was brought on the 10th May and 14th of June, 1806, before the board of commissioners appointed under the 5th section of the act of 2d March, 1805; and on the 2d January, 1812, the same board decided that the claim ought not to be granted. See minutes of said board, book No. 1, pages 289 and 311, and book No. 5, page 552. It was confirmed by the act of Congress of 13th of June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri." The claim of Jeannette's, survey No. 1286 and 1289, was surveyed in 1788, and confirmed on the 19th and 20th of November, 1811, by the aforesaid board of commissioners, as detailed in the caption to the present description of her survey. See in relation thereto the following books in the office of the recorder of land titles: Livre terrien, No. 2, pages 77 and 78, recorded book F, p. 178, and board minutes, book No. 5, ps. 424 and 436. Consequently, on account of its previous survey and confirmation, I am of opinion that the claim of Jeanette (survey No. 1286 and 1289) should have precedence over survey No. 3125 of the commons of St. Louis.

(Signed) F. R. CONWAY,
Surveyor of the Public Lands in the States of Illinois and Missouri.

OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, October 14th, 1854.

I hereby certify that the foregoing plat and description of survey No. 1286 and 1289, in the name of Jeannette, a free negro woman, also the certificate of approval, and the statement relative

to the interference of survey 3125, are correctly copied from pages 187 and 188 of book D, records of private land claims in Missouri, on file in this office.

JOHN LOUGHROROUGH,
Surveyor General.

Evidence was then given tending to prove that the premises in dispute are a art of the tract described in said survey, and that Charles Gratiot, the confirmee of the tract, died on the 20th day day of April, 1817, leaving a widow and children; and the facts stated in the following paper concerning his widow and descendants were agreed to be taken as admitted, to wit:

Statement of facts.

Charles Gratiot and Victorie Chouteau were married in 1781.

April 20th, 1817, Charles Gratiot died intestate, and his wife survived him, and died in . At the time of Charles Gratiot's death he left the following descendants, viz: Children—1. Charles; 2. Henry; 3. John P. B.; 4. Julia, then wife of John P. Cobanné; 5. Victorie, then wife of Silvester Labadie; 6. Emilie, then wife of Pierre Chouteau, jr.; 7. Isabella, then wife of Julius De Munn; 8. Paul M. Grand-children—1. Zelina Macklot, born in the year 1808; 2. Virginia Macklot, born July 23d, 1814. They were children of John N. Macklot and Maria Therese Gratiot, the latter of whom died before her father. Zelina was married in 1827 to Henry A. Thompson, and Virginia was married January 31st, 1837, to Pierre A. Berthold. All the above-named descendants of Charles Gratiot are now living except Henry and Julia. Henry died in 1836 intestate, leaving a widow and the following children, namely: 1. Charles H.; 2. Edward H.; 3. Susan, who was afterwards married to Thomas Child, and died leaving one child, named William Henry; 4. Mary, who died without issue, and intestate; 5. Henry; 6. Adele, afterwards married to Elihu B. Washburne; 7. Stephen H.; 8. Eliza. Susan Gratiot, widow of Henry, died in 1854. Julia G. Cobanne survived her husband. He died in 1841. She died March 19, 1852, intestate, and leaving the following descendants, viz: Children—1. John Charles, usually called Charles; 2. Lucien D.; 3. Francis; 4. Jules L. Grand-children—1. Virginia, wife of Frederick Berthold, and daughter of John B. Sarpy and Adele Cobanne; 2. Virginia Kingsbury, Adele Kingsbury, and Jules Kingsbury, all children of James W. Kingsbury and Julia Cobanne, who were married May 25, 1830. John B. Sarpy is the guardian of Adele and Julius. Silvester Labadie died July 24th, 1849, and his widow, Victorie, still lives. Julius De Munn died in August, 1843, and his widow, Isabella, still lives.

The plaintiffs then gave evidence tending to show that, by de-

scents and various deeds recently executed, they had acquired all the right and title of Charles Gratiot in said tract, and rested their case.

Close of plaintiff's case.

The defendants claimed title to the premises under a confirmation to one Jeannette by the board of commissioners of prairie land claims in Missouri, and gave in evidence the following copy of a claim of and confirmation to said Jeannette.

Claim.

Jeannette, negro woman, claims 80 arpens of land, situate in the district of St. Louis, under the second section of the act of Congress made and provided.

[For plat, see original, page 27.]

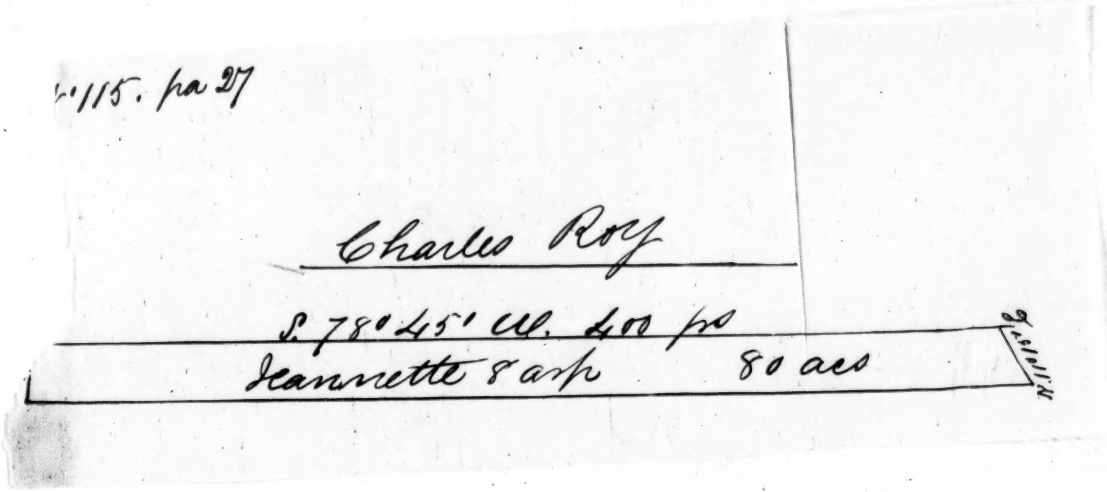
A la reclamation de la nommé Jeannette, negresse libre, je certifie par tout ou besoin sera que le plan ci-dessus est un reléve conforme au certificat de l'arpentage de la ditte terre le quel fat protiqué par Monsieur Pierre Chouteau, en conformité des ordres du Lieutenant Gouverneur, Don Manuel Perez, dans le cours de l'armée, 1788, lequel certificat d'arpentage se trouse poste au folio 77 du livre No. 2, des anciens titres du poys en foi de quoi. J'ai delivré le present a l'interesse pour lue servis et valoir comme de raison a constate sur ses pretensions. Saut Louis, 24 Fevrier, 1805.

ANTOINE SOULARD,
Surveyor Gen'l T. Louies'a.

(See book B, page 220.)

Je, Pierre Chouteau, soussigné, en vertu du pouvoir dont Monsieur Don Emanuel Perez, capitaine d'infanterie et Lieutenant Gouverneur de la partie occidentale des Illinois, ma reveter a la requete des habitans de ce poste St. Louis demandant que les dimentions, directions, et limites des terres qu'ils possedent a la Prairie a Denoyer, soyent determinees par personnes competent et authoriseé a cette fin, declare a tous qu'il appartrienda que la requisition de chacun déux desdits habitans le vingt-troisieme, Juin mil sept cent quatre-vingt-huit. Je me suis expres transporte de mon domicile sis dans ce sus dit poste St. Louis, sur une terre a Jeanette de deux arpens de large sur guarante de larg a elle apportenante partie laboureé partie en feche, situe a la Prairie a Denoyer, et terrant immediatement au domaine due Roy et de l'autre coté a celle du nomme Chs. Roy, et des deux autres comme ci-devant, (un bout de la dite terre joignant l'habitation Jr. Jn. Gratiot et l'aufre bout au domaine du Roy,) pour l'arpentes avec mon instrument et une chaine de guarente cinq piedo de long, dant la longeur prise quatre fois foit. Juste l'arpentensite ence pays qui est de cent quatre-vingt pieds sur choque face, a l'execution de quoi me faisant accompagner de la

v. 115. pa 27



ditte proprietaire et du dit Chs. Roy voisire le plus immediats pour me servis de temaines et ni indiquer exactemcnt lo veritable situation de leurs concessions respectives. Je suis parvenie et l'ai fait bovuer en ma presence avec des pierres a ses quatre extremities apres l'avoir fait mesureé sur ces ligues de largeur et longeur dont les deux premieses paralles c'est a dire de largeur vont comme ci-devant vont au nord-ouest en secarlant du nord-vers l'ouest de ouze degres quinze minutes, et les deux outres dernieres c'est a dire de longeur ansé parallelles vant au ouest quart sud-ouest ou mieur secarlant de l'oust vers le sud de ouze degres quinze minutes sans ancure egard a la variation du compas qui pent y' avoir et font par consequent ere divigeaut la vuest allant du point du deport vers le nord quart de nord-ouest et ves l'ouest quart de sud-ouest un angle obters de cinquante degrees vingt-deux minutes, et demi compensation faite des differences causees par les inequalities des terres et inclinaisons des ligues les unes sur les autres par a post au perpendiculaires orizontales qui servent tougours a leurs oraie mesure tant sur la largeur que sur la longueur ornisique les deux autres de longeur avec les memes compensation, inclinaisons, &c. Ainsi je l'atteste par mon seing et par l'aveu emanine de tous les proprietaires sus nomnees assembles dans ce moment avec l'aprobation de mon dit Sieur Don Emanuel Perez dans la chambre du gouvernmente pour se servir mutuelement de temoins et offirmer le fait, les uno pas leurs seings les autres par leurs declarations a defaut de savoir. Signer en presence de Monsieur Don Emannuel Peres, capitanie du battaillon de la Louisiane, et lieutenant gouverneur commandant en ce poste, a fin d'aprouver, confirmer, et ratifier ain si que par sou seing en sa qualite de lieutenant gouverneur avec la quelle il est muni du meme parevoir de conceder les processions accordeés par les autres commandants ces autecesseurs et spécifices dans ce corp de cadastres, que je remet contenant dix pages ecrites, celle ci inclusivement aux archives de ce gouvernement pour y etre conservée a perpetuite et servir au besoire surete authenticite et ternoiguage de tout ce qui yést expose a St. Louis, le Aoust, mille sept cent quatre-vingt-huit.

PIERRE CHOUTEAU,
MOTARD.

See livre terrein, No. 2, pages 69, 77, and 78.

WEDNESDAY, *November 20th*, 1811.

Board met pursuant to adjournment. Present, John B. C. Lucas, Clement B. Penrose, and Frederick Bates, commissioners.

Jeanette, negro libre, claiming 80 arpens of land situate Barriere Denoyer, district of St. Louis, produces a report of survey signed Pre. Chouteau and Motard, dated in 1788, a majority of the board, John B.C. Lucas, commissioner, dissenting, grant to Jeanette, a free negro woman, eighty arpens of iand, under the provisions of the 2d section of the act of Congress entitled an act respecting

claims to land, and passed 3d March, 1807, and order that the same be surveyed on her possession, survey at the expense of the claimant.

Board adjourned till Saturday next, nine o'clock a. m.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERIC BATES.

(See commissioners' minutes, book) No. 5, pages 427, 436, 442.

LOUISIANA:

Commissioners' certificate No. 1289.

NOVEMBER 20TH, 1811.

We, the undersigned, commissioners for ascertaining and adjusting the titles and claims to land in the territory of Louisiana, have decided that Jeanette, a free negro woman, original claimant, is entitled to a patent under the provisions of the second section of the act of Congress entitled "An act respecting claims to land in the territories of Orleans and Louisiana," passed the 3d of March, 1807, for eighty arpens of land situate in the district of St. Louis, Barriere des Noyers, and order that the same be surveyed conformable to her possession—by virtue of ten consecutive years' possession prior to the 20th of December, 1803.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERICK BATES.

The defendants then gave evidence tending to prove that the person named Jeanette, in whose name said tract of land was confirmed, as stated in the paper last above set forth, was a free negress, who lived in the town of St. Louis, and died there, either before or just after the change of government, in the year 1803, leaving one child, named Susanne Jeanette, who died some ten or fifteen years ago; and that the defendant, Mary McRee, whose tenant the defendant, McDonald, was, had, by descent and purchase, acquired all the title of Susanne Jeanette to the said tract.

The defendants further gave evidence tending to prove that the said Jeanette, and she alone, possessed and cultivated said tract under the Spanish government; that she was never known by any other name than simply Jeanette; that there was not in or about St. Louis, in or before the year 1805, any woman named Jeanette Flore; that there was a woman named Marie Flore, who owned a tract in the Prairie des Noyers of half an arpent in front by forty in depth, which lay to the south of and was distinct from the premises in dispute; that neither any person named Jeanette Flore, nor the deceased Charles Gratiot, nor any person claiming under him, had ever cultivated or possessed the tract of which the premises in dispute are a part, but that the defendants, or those under whom

No 115 Box 811 Env

they claim, had been in the uninterrupted possession of a part of said tract other than that part claimed in this action ever since the year 1829, and of the whole of the tract, for nearly the same length of time, all the time claiming title to the whole.

The defendants then gave in evidence the following copy of a connected plat of all the lots in the Prairie des Noyers.

Plat of Prairie des Noyers.

[For plat see original, page 33.]

OFFICE OF THE SURVEYOR GENERAL OF
ILLINOIS AND MISSOURI,
ST. LOUIS, 22*d Nov.*, 1854.

The above is a correct copy of a plat of the northern part of the Prairie des Noyers common fields of St. Louis, on file in this office, and purports to have been returned by Jos. C. Brown, D. S., with his field notes of the survey of the lots in said fields under his contract of 15 September, 1835. However, the claim of Jeannette on the original plat appears to have been laid down by J. J. Sprigg, former chief clerk in this office.

JOHN LOUGHBOROUGH,
Surveyor General.

In connection with this plat, defendants gave evidence tending to prove that the surveys embraced in it were made in the year 1838, by Joseph C. Brown, a deputy surveyor, acting under the authority of the United States, who surveyed all the lots in Prairie des Noyers, including that of which the premises in dispute are a part, and returned his survey of the whole to the surveyor general of Illinois and Missouri; that the connected plat given in evidence by defendants is a copy of the plat made and returned by said Brown; that the survey so made by said Brown was examined and approved by the then surveyor general, William Milburn, after a careful examination of the field notes and confirmations; that according to the practice in the surveyor general's office at that time, said survey was then considered final and officially complete, and that on the twentieth township plat of the township returned to the department at Washington, the name of Jeanette only was written on the plat of the tract of which the premises in dispute are a part, with the number 1289; that the said William Milburn himself wrote the word Jeannette on the face of the plat on the tract which included the premises in dispute; that the figures "1286" were written upon the survey of that tract in the year 1845; that the compilation survey given in evidence by the plaintiffs was made up in the office of the surveyor general in the year 1846 upon Brown's survey; that no actual survey was ever made by Charles Gratiot or his representatives, and that it was the prac-

tice in the surveyor general's office for a long time to issue certificates on plats as returned before the survey was recorded.

Defendants further gave evidence to prove that the paper signed "Antoine Soulard," and connected with the confirmation to Jeanette given in evidence by the defendants, was filed before the board of commissioners and recorded by them before the claim of Charles Gratiot was filed before them.

It also appeared in the course of the trial that the survey made by Chouteau in 1778 of the Jeannette tract was not recorded in the books of the board of commissioners along with the paper signed "Antoine Soulard," but that said survey of 1778, together with the deed of Jeannette Flore to Charles Gratiot embraced in the copy of the claim of and confirmation to said Gratiot, given in evidence by the plaintiffs, were recorded in full in the books of the board in connection with the claim filed by Gratiot to said tract.

The defendant then gave in evidence sundry papers, as follows, to wit:

1. A certified copy of pages 77 and 78 of livre terrein, No. 2, in the words and figures following, to wit:

"Page A."

FLORE: Je me suis expres transporté de mon domicilé sis dans ce susdit poste St. Louis, sur une terre de demy arpent de large sur quarante autre de long a elle appartenante partié laboure partie en feche située dans la même prairie que cy-devant tenant immediatement a celle de Charles Ray et de l'autre coté a celle du nommé Louis Bodain, et des deux autres comme cy devant pour l'arpenter avec, &c^{a}., à l'execution de quoi me faisant accompagner de la ditte proprietaire et du dit Charles Ray vissin le plus immediat pour me servir de témoin et ni indiquer exactement la veritable situation de leurs concessions respectives, je suis parvenu et l'ai fait borner en me presence avec des preares a ses quatres extremites apores l'avoir mesurée sur ces lignes de largeur et longuer, dont les deux premieres paralleles c'est a dîre de largueur vaut comme cy-devant ainsi que les deux autres de longeuer ayec les memes compensations, inclinaisons, &c. Ainsi je l'atteste par mon seing, &c. Charles Ray, je me suis expres transporte de mon domicile sans dans ce susdit poste St. Louis sur uue terre de deux arpents & demy de large sur quarente autre de long a lui appurtenant partie labourée parties en fiche, situee dans la meme prairie que cy-devant et tenant immediatement a celle de Janette naigresse libre et de l'autre celle du nomme Flore et des deux autres comme cy-devant pour l'arpenter avec, &c., à l'execution de quoi me faisant accompagner de la ditte proprietaire et de la ditte Jeanette raisine la plus immediate pour me servir de temoine et m'indiquer exactement la veritable situation de leurs concessions respectives, je suis parvenu et l'ai fait bomer en ma presence avec

des pienes a susquatre extremities après l'avoir mesurée sur ces lignes de largeur et langueur, dont les deux premieres paralleles c'est à dire de largeur, virit comme cy-devant ainsi ques les deux autres de longueur, avec les mêmes compensations, inclinaisons, &c. Ainsi je l'atteste par mon seing, &c. Jeanette, je me suis expres transporté de mon domicile sis dans ce susdit poste St. Louis, sur une terre a elle appartenante de deux arpents de large sur quarante autres de long partie labourée partie en fiche située dans la même prairie que cy-devant et tenant immediatement au domaine du Ray et de l'autre coté a celle du nommé Chs. Ray et des deux autres comme cy-devant pour l'arpenter avec, &c. Mon instrument, &c., a l'execution de quoi me faisant accompagner de la ditte proprietarie & du dit Chas. Ray voisin le plus immediat pour me servir de temoin et m'indiquer exactement le veritable situation de leurs concessions respectives, (page E,) je suis parvenu et l'ai fait borner en ma presence avec des prenes a ses quatres extremities apres l'avoir mesuree sur ces lignes de largeur et longueur, dont de deux premieres paralelles, cest a dire de largeur vaut comme cy-devant ainsi que les deux autres de longueur avec les mêmes compensations, inclinaisons, &c.

Ainsi je l'atteste par mon seing et par l'aveu unanime de tous les proprietaries susnommes assemblés dans ce moment, avec l'aprobation mon dit Sieur Don Emanuel Perez dans la chambre du governement, pour se servir mutuellement de temoins et affirmer le fait les uns par leurs seings les autres par leurs declarations, à defaut de savoir signer en presence de Monsieur Don Emanuel Perez, capitaine du battaillon de Louisiane, et lieutenant governeur commandant ce poste afin d'approuver, confirmer et ratifier ainsi que par mon seing en en sa qualitie de lieutenant gouverneur, avec laquelle il est muné du même pouvoir de conceder les possessions accordées par les autres commandants ces antecesseur et specifices dans ce corps de cadastre que je remets contenant dix pages écrites celle cy inclusivement aux archives de de gouvernement pour y être conservée à perpetuite et servir au besoin, sureté, authenticité, et temoignage de tout ce qui y est exposé. A St. Louis, le Aoust, mille sept cent quatre-vingt-huit.

PRE. CHOUTEAU,
T. MOTARD.

See livre terrein, No. 2, pages 77 and 78.

OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, 16th November, 1854.

I certify that the foregoing page A is correctly transcribed from page 77, and this page B is correctly transcribed from page 78, of livre terrein, No. 2, in this office.

ADOLPH. RENARD,
U. States Recorder of Land Titles in the State of Missouri.

Deed from Jeannette to Gratiot.

2. A certified copy of a deed from Jeannette Flore to Charles Gratiot, and an addendum thereto in the name of Florence Flore, recorded March 30, 1817, in the words and figures following, to wit:

Sachent tous ceux qui ces presentes venant que moi, Jeanette Flore, demeurant en la ville et district de St. Louis, dans la Louisiana, et en presence de temoins reconnais avoir ce jourd'hui vendu, cedé, quitté, delaissé, abandonné, et transporté, et promets garantir de tous troubles, dettes, douxires, hypotheques, evictions, substitutions, et autres empechments generalement quelconques à Charles Gratiot ecuyer resident en la ditte ville savoir une terre siuée ce la Prairie à Denoyers dans le dit district contenant deux arpens de front sur quarante de profondeur tenant de trois cotés aux terres vacantes, et d'un coté à Charles Ray, ainsi qu'il est mentionné au livre terrein resté entre les mains d'Antoine Soulard ecuyer arpenteur du dit district, laquelle terre m'a été concedée par Mr. Manuel Peres, ci-devant lieutenant governeur de la partie occidentale des Illinois en date du mois d'Aoust, mil sept cent quatre-vingt-huit. La vendant au dit Charles Gratiot, pour et moyennant le prix et somme de quarante piastres que je reconnais avoir recu comptant et à ma satisfaction des mains du dit Sieur Charles Gratiot, et dont par ces mêmes presentes je le tiens quitte et decharge, voulant qu'il jouire de la dite terre des ajourd'hui ses hoirs ou ayant causes et en disposer comme de choses ce eux appartenante et sans que mes hoirs, executeurs, ou administrateurs puissent rappeler ni contrevenir a la teneur du presentes par moi possées en ce jour promettant, &c., obligeant, &c., renoncant, &c., en foi de quoi ne sachant signer j'ai fait ma marque ordinaire en presence de temoins a St. Louis, district cy-dessus ce onze Juin, de l'année de notre Seigneur mil huit cent cinq, et la vingt-neuvieme de l'independence des Etats Unis d'Amerique.

Marque de
JEANNETTE × FLORE.

Signé, scellé, et delivré en presence de—
M. P. LEDUC,
JER. CONNER,
GRE. SARPRY.

LOUISIANA TERRITORY,
District of St. Louis.

December third, eighteen hundred and five, personally came before the subscriber, one of the justices of the court of common pleas of the district aforesaid, personally came the within-named Jeannette Flore, and acknowledged the within instrument of writing to be her act and deed for the purposes therein mentioned, and to

be recorded. In witness whereof, I have hereunto set my hand and seal the day and year above written.

D. DELAUNAY.

DISTRICT OF ST. LOUIS, *ss:*

Recorded book A, pages one hundred and ninety-seven and following, this third day of December, in the year of our Lord one thousand eight hundred and five.

M. P. LE DUC, *Recorder.*

3. A certified copy of an instrument of writing executed by Florence Flore, John P. Cobanné, and Victorie Gratiot, in the words and figures following, to wit:

Va que le onze Juin, de l'anné mil huit cent cinq, la nommé Florence Flore, negresse libre de la ville et comte de St. Louis, territorie de Missouri, a vendu, cedé, et transporte au Sr. Charles Gratiot, un certain morceau de terre, situé à la barriere Desnoyers, ainsi qu'il parait par acte de vente en dotte du dit jour et recordé en l'office du recorder du comte de St. Louis, livre A, pages cent quatrevingt-dix-sept et suivante, et que dans le dit acte il se trame une errour manifeste dans la quantite de terre vendue, dans la situation limite et description de la dite terre ainsi que dans le nom de la dite Florence Flore, maintenance qu'il soit connu tous ceux qui ces presentes verrant que la dite Florence Flore d'une part, et le Sieur Jean P. Cobanne et Made. Veuve Gratiot, Sr. Chs. Gratiot d'autre part, annullent l'acte cy demis cite qui dés cejour devient nulet de nulle valeur, renoncant désà present et pour toujoirs a tous droits et privileges en virtu du dit acte. Et en consideration de la presente renonciation ainsi que de la somme de quarante piastres que la dite Florence reconnoit avoir recu dedefant Charles Gratiot et dont elle tient quitte et decharge des à present et pour toujois les herities et representants du dit Chs. Gratiot leurs hoirs ou ayant causes—la dite Florence Flore de la ville et comté de St. Louis territorie cy-dessus dit a cedé, vendu, transporte, et abandonne, comme de fait, et par ces presentes, elle vend, cede, transporte, et abandonne aux heritiers et representans legaux du dit deffunt Charles Gratiot, tous les droits titres, actions, pretentions, et propriete qu'elle arpent avoir dans uncertain morceau de terre situé a la barriere Desnoyers ayant une demi arpent de front sur quarante de profondeur. Comé d'un coté par les terres appartenant ci-devant ce Charles Ray et de l'autre cote, par celle appartenant cy-devant au Sr. Louis Boudoinn—a elle concedé parle gouvernement Espagnol, ainsi qu'il parait au livre terrein, No. 2, page soinante-dix-sept. Ainsi que sur tous autres morceau de terre que la ditte Florence Flore peut avoir acquit ou echangé avec letteur Gregorie Sarpy et situés a la dite barriere des Noyers, pour les dits heritiers et representants legaux du dit deffunt

Chs. Gratiot jouir, avoir et posseder les surdits morceaux de terre ainsi que la dite Florence Flore annexit pu le faire elle meme, mais sans aucune autre garanté que contre elle-même ses hoirs, executeurs, ou administrateurs. En foi de quoi la dite Florence Flore et le Sieur Jean P. Cobanné et la Dame Gratiot ont signe et scellé le present acte a St. Louis ce treize journée mil huit cent dix-neuf. Les mots iterlignes a la p. et 2 page approuves en presence determoins.

mark of.
FLORENCE × FLORE, [SEAL.]
COBANNE, [SEAL.]
VICTORIE GRATIOT, [SEAL.]

Signé, scellé, et delivre en presence de—
JULIUS DE MUN, as to the hand of Victorie Gratiot.

TERRITORY OF MISSOURI,
County of St. Louis:

Be it remembered that on the fourteenth of January, in the year of our Lord one thousand eight hundred and eighteen, before me, Francis M. Guyol, a justice of the peace in the aforesaid county, personally appeared the within-named Florence Flore, a free black woman, Peter Cobanne, and Victorie Gratiot, and all acknowledge the within instrument of writing to be their and each of their act, deed, hand, and seal for the purposes therein contained.

In testimony whereof, I have hereunto set my hand and affixed my seal, at St. Louis, on the date first above written.

F. M. GUYOL, *J. P.* [SEAL.]

Recorded this twenty-first day of January, 1819.

A. GAMBLE,
Clerk.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify the foregoing to be a full and complete copy of an instrument of writing and also of the certificate of acknowledgment and of the date of recording thereof, as fully as the same remains recorded in my office, in book H, pages 150 and 151.

Witness my hand and official seal, at St. Louis, this 12th day of May, A. D. 1848.

S. D. BARLOW,
Recorder.

The defendant then gave evidence tending to prove that John P. Cobanne and Victorie Gratiot were the administrators of Charles

Gratiot, and that as such they, in the year 1820, by proper judicial authority, sold the tract of half an arpent in front by forty in depth, conveyed to them in the deed last above set forth, and that the proceeds of the sale thereof were received and appropriated by them as part of the assets of the estate of Charles Gratiot.

The defendants then gave in evidence the following certified copy of papers and depositions:

ST. LOUIS, *February 5th*, 1820.

Be it remembered that on the 5th day of February, in the year eighteen hundred and twenty, I, Archibald Gamble, the clerk of the circuit court for the county of St. Louis, by the authority of a dedimus to me directed from the hon'ble Silas Bent, one of the judges of the superior court of the Territory of Missouri to take the depositions of Paul Guitard, pere, and Abadie dit St. Pierre Tonnelier, for the purpose of perpetuating their testimony according to the petition of the heirs of Charles Gratiot, deceased, I did cause the above-named witnesses to appear at my office in the town of St. Louis, agreeably to the notice given, between the hours of ten and two o'clock on the said fifth day of February; and the said Paul Guitard, pere, being examined, says, that he cannot speak English, and speaks but French.

Deposition of Guitard.

Dit qu'il a connue Louis Boury, pere, le quel est mort a present; qu'il a connue Charles Gratiot depuis quarante-six ans, le quel est mort ainsi.

And the said deponent being requested to say whether he knew of the sale of any land by said Louis Bory to the said Charles Gratiot, and the particulars thereof, says:

Ou, apentrés deux ou tois ans avant que Louis Boury, mourut il vint chez le deposant et lui montra des marchandises qu'il avoit recu pour prix de la vente d'ane terre qu'il dit avoir vendu a la Barriere Denoyers la quelle terre il dit avoir vendu a Mr. Gratiot cy-dessus nommé. Qu'il ne sait pas quélle etoit la Grandeur de la terre. Louis Boury dit au deposant qu'il avoit mieux anné. Vendre lá terre pour s'habiller que de la garder enfriche vi enfoisant rien, que Louis Boury a apporté chez le deposant du drop de la toile de coton et d'autres choses et que la femene du dit deposante avait fait deshabillements pour le dit Boury et sans fils, et qu'il dit que c'etoit des merchandises qu'il avoit encle Mr. Gratiot pour sa terre, is le deposant dit qu'il est agé de quatre-vingt onze ans que Louis Boury est most depuis que les Americains aut pris possessione dupois.

His
PAUL × GUITARD, PERE.
mark.

I certify that the foregoing deposition of Paul Guitard, taken down as nearly as could be in the words of the deponent, was distinctly read over to him, and that the same was sworn to and signed before me this fifth day of February, 1820.

ARCHIBALD GAMBLE,
Clerk.

And the said Aboddie dit St. Pierre Tounnelier saith: Qu'il connoisoit Louis Boury et Charles Gratiot, pere, qui sout tois deux morts; and being requested to say if he knew anything relating to the sale of land by and between the same, saith: Que Louis Boury et lui doit tous deux vaisins que leux terres etoient adjacentes, que sa terre, (a lin deposant,) etoit a nord et celle de Louis Boury au sud, que leurs terres etoient situees dans la barriere a Denoyers a pere pris a une lieue dans l'ouest de St. Louis qué un certaire jour en revenant du champ, il rencoutra Louis Boury qui lin dit qu'ils n'etorent plus vaisins, Comment? dit le deposant. Oui, repondit, Louis Boury; J'ai vendu ma terre á Mr. Gratiot au mains á present lorsque tu fancheras dit Louis Boury tu demanderas la purmission a Mr. Gratiot c'st pour-quoi J'e t'avertis que cette conversation ent lieu a pere prés deux ans avant le changement du governement, qu'il ne soit pas la quantitie de terre qu' avoit Louis Boury, mais qu'l en cultivait pour ses besoins un arpent de large sur quarante de lang. Que Louis Boury es mart il ya apen prés six au sept ans. And further this deponent saith not.

JOSEPH LABADY.

I certify that the foregoing affidavit of Abbadie dit St. Pierre was taken down in the words of the said deponent, and then sworn to and subscribed by St. Pierre before me this fifth day of February, 1820.

ARCHIBALD GAMBLE,
Clerk.

Francis M. Guyal, esquire, who wrote down the depositions of the foregoing witnesses in French, being duly sworn, upon his oath says that the same were taken down truly and as nearly in the words of the said witnesses as he could do it.

F. M. GUYOL.

Sworn to and subscribed before me this fifth day of February, 1820.

ARCHIBALD GAMBLE,
Clerk.

Recorded this 5th day of February, 1820.

ARCHIBALD GAMBLE,
Clerk.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify that the foregoing is a true copy of two depositions made by Paul Guitard, pere, and Joseph Labodie, and also of the certificate of acknowledgment and date of recording thereof, as fully as the same remains of record in my office, in book J, page 59.

Witness my hand and seal of office this the 23d day of Nov'r, 1854.

C. KEEMLE,
Recorder.

NOTICE: To Louis Boury, son of Louis Boury, deceased, and to all others whom it may concern:

Remember that on the first Saturday of February, in the year 1820, at the office of Archibald Gamble, esquire, clerk of the circuit court for the county of St. Louis, in the town of St. Louis, before the said Archibald Gamble, esq., I shall take the depositions of Paul Guitard, pere, Alaxis Salonde, and Abbodie dit St. Pierre Tomeliere, for the purpose of perpetuating the same, by virtue of a commission from Silas Bent, esquire, one of the judges of the superior court for the territory of Missouri, according to the prayer of our petition, a copy of which is herewith published, when and where you may attend and cross-examine, if you please.

COBANNE,
SM. LABODIE,
JOHN MACKLAT,
PIERRE CHOUTEAU, JR.,
JULIUS DE MUN,
HENRY GRATIOT,
CHARLES GRATIOT,
J. P. GRATIOT,
PAUL GRATIOT.

ST. LOUIS, *Nov'r* 26, 1819.

Petition.

To Silas Bent, esquire, one of the judges of the superior court for the territory of Missouri:

The petition of the heirs of the late Charles Gratiot respectfully shows that the said Charles Gratiot, in his lifetime, purchased of one Louis Boury a certain tract of land containing two arpents in front upon forty arpens in depth, situated in the county of St. Louis, at the place called the Barriere des Noyers, and that the said Louis Boury has departed this life without having made any conveyance of the said land to the said Charles Gratiot in his lifetime, or to

his heirs since his death; that the said tract of land was conceded by the Spanish authorities in Upper Louisiana to one Charles Roy, by him sold to the above-mentioned Louis Boury, about twenty years ago, and by the said Louis Boury sold to the said Charles Gratiot, about fifteen years ago, and that they can prove the said last-mentioned sale by evidence of Paul Guitard, pere, Alexis la Laude, and Abaddie dit St. Pierre Tonnelier, as they verily believe. They also represent that the three last-mentioned persons are aged, and cannot by the course of nature be expected to live in any year longer, and that evidence will be material towards establishing the title of the sd. Charles Gratiot, deceased, to the said tract of land. Your petitioners therefore pray a dedimus, directed to the clerk of the circuit court for the county of St. Louis, authorizing him to take the depositions of the said persons for proving the sale of the said tract of land to the said Charles Gratiot, in order that the same may be perpetuated agreeably to the form of the statute in that case made and provided. And your petitioners will ever pray, &c.

COBANNE,
SN. LABADDIE,
JOHN MACLAT
PIERRE CHOUTEAU, JR.,
JULIUS DE MUN,
HENRY GRATIOT,
CHARLES GRATIOT,
JN. P. GRATIOT,
PAUL GRATIOT.

ST. LOUIS, *October 24th*, 1819.

Affidavit.

TERRITORY OF MISSOURI,
County and Township of St. Louis, ss:

Before me, Jeremiah Conner, esquire, a justice of the peace for the county and township aforesaid, personally came and appeared John P. Cabanne, of St. Louis, one of the heirs of Charles Gratiot, deceased, and made oath in due form of law that he verily believes the facts stated in the foregoing petition to be true.

CABANNE.

Subscribed and sworn to before me this 25th day of October, 1819.

JERAH. CONNER, [SEAL.]
Justice of the Peace.

Commission to Archibald Gamble, esquire, clerk of the circuit court of the county of St. Louis, greeting:

By virtue of authority in me vested by law, I, Silas Bent, esqr.,

one of the judges of the superior court for the Territory of Missouri do hereby authorize and appoint you to take the deposition of Paul Guitard, pere, Alex. La Lande, and Abaddie, dit St. Pierre Tounelier, for the purpose of perpetuating the same according to the foregoing petition of the heirs of Charles Gratiot, deceased, and that you cause the said witnesses to come before you at such time and place as you shall appoint within the provisions of the statutes for taking depositions for perpetuating testimony, and of which due notice shall have been given by the heirs of the said Charles Gratiot.

SILAS BENT.

Recorded this fifth day of Feb'ry, 1820.

ARCHIBALD GAMBLE, *Clk.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify the foregoing to be a true copy of a notice, petition, affidavit, and commission, and also of the date of recording the same, as fully as the same remains of record in my office, in book I, page 57 and following.

[SEAL.] Witness my hand and official seal this 23d day of November, 1854.

C. KEEMLE, *Recorder.*

The foregoing is all the evidence given in the cause.

Instructions for Plaintiffs.—Refused.

The plaintiff then prayed the court to give the following instructions to the jury:

1. If the jury find that Jeannette was dead before the time of filing the claim in her name with the recorder, then the confirmation to her individually was void, and neither the confirmation nor claim can have any effect on the rights of the parties in this case.

2. The confirmation of the tract of which the land in controversy is a part to Charles Gratiot is in law conclusive as to two facts—first, that he was the true and proper assignee of Jeanette Flore by the deed under which he claimed the land before the board of commissioners; and second, that he had the oldest and best claim to the land as against every other claimant under the Spanish Government. And subsequent confirmation of the said tract to another person could not defeat that made to Gratiot.

3. The tract confirmed to Charles Gratiot on the 19th of September, 1811, was the same tract described in the Spanish survey for Jeanette, filed and recorded with his claim.

The court refused to give said instructions, to which judgment of the court refusing said instructions the plaintiffs then excepted.

Instructions given for Defendants.—Given.

The court then, on motion of defendants, instructed the jury as follows:

If the jury find from the evidence that the tract of land confirmed to Jeannette by the board of commissioners includes the land in controversy, and is the same land which was surveyed for Jeannette by the authority of the Spanish Government; that said Jeannette and those acting for or under her were the only persons who inhabited, cultivated, or possessed the said tract prior to the 20th of December, 1803; that the person who executed the deed in the name of Jeannette Flore, and filed by Charles Gratiot with the recorder of land titles as one of the evidences of his claim, is not the person for whom the survey of said tract of land was so made, but another and a different person, and that she cultivated and possessed, prior to the 20th of December, 1803, another and different tract in the same common field, surveyed for her by authority of the Spanish Government in the year 1788, embracing no part of the land in controversy,—the jury ought to find for the defendants.

To the giving of these instructions the plaintiffs then excepted.

The jury then rendered a verdict for the defendants, which verdict the plaintiffs moved the court to set aside and grant them a new trial, which motion is in the words following, to wit:

PIERE A. BERTHOLD et al.
vs.
JAMES MCDONALD and MARY MCREE. } In the St. Louis land court. October term, 1854.

The plaintiffs move the court to set aside the verdict herein rendered, and grant them a new trial, because the court admitted improper and illegal evidence to be given on behalf of the defendant, and because the court gave improper instructions to the jury, and because the court improperly refused to give instructions asked by the plaintiffs.

C. D. DRAKE &
R. M. FIELD,
Att'ys for Plffs.

This motion was overruled by the court; to which judgment of the court the plaintiffs then excepted, and prayed the court to sign and seal this bill of exceptions; which is accordingly done; the defendants waiving any objection thereto on account of the same not having been signed and filed during the term of the court at which the cause was tried.

EDWD. BATES, [SEAL.]

STATE OF MISSOURI,
County of St. Louis, ss:

I, Charles A. Mantz, clerk of the St. Louis land court within and for said county, certify the foregoing transcript to be a true copy of the record and proceedings had in the case of Pierre A. Berthold and others, plaintiffs, vs. James McDonald, defendant, as required, as the same now remains of record in my office.

In testimony whereof, I hereunto set my hand and affix the seal of our said court, at office, in the city of St. Louis, this seventeenth day of September, A. D. 1855.

[SEAL.]

CHARLES A. MANTZ, *Clerk.*

And afterwards, in our said supreme court, at the October term, A. D. 1855, the following proceedings were had in this cause:

Proceedings in Supreme Court.

PIERRE A. BERTHOLD & als.
vs.
JAMES MCDONALD & al.

This cause is now continued by the court until next term.

And afterwards, at the March term, in the year 1856, the following proceedings were had herein, to wit:

Cause argued and submitted.

PIERRE A. BERTHOLD & al.
vs.
JAMES MCDONALD & al.
Error to St. Louis land court.

Now come again the parties herein by their respective attorneys, and argue this cause, and submit the same to the court for decision.

And thereupon the court took said cause under advisement until the next term.

And afterwards, at the October term, in the year 1856, and on the 15th day of December, in said year, the court rendered the following judgment in this cause, to wit:

Judgment.

PIERRE A. BERTHOLD & als., P. E.
vs.
JAMES MCDONALD & al., D. E.
Error to St. Louis land court.

Now come again the parties herein by their respective attorneys,

and the court here being now sufficiently advised of and concerning the premises, do consider and adjudge that the judgment aforesaid, in form aforesaid, by said land court rendered be in all things affirmed and stand in full force and effect; and it is further considered by the court that said defendants in error recover against said plaintiffs in error their costs and charges herein expended, and have thereof execution.

And on the same day the court filed a written opinion in said cause, which is as follows:

Opinion of Supreme Court.

P. A. BERTHOLD & als.
vs.
McDONALD & al.
} Error to the St. Louis land court.

This is a case of the first impression in our courts. We have not found one in which there has been in our tribunals a controversy as to the relative merits of two confirmations for the same tract of land under the act of Congress of the 3d of March, 1807.

We are not prepared to acquiesce in the correctness of the assumption that the principle of the case of Landes v. Brant, 10 How. 348, is applicable to that now under consideration. The rule there maintained is, that when the commissioners under the act of Congress of the 3d of March, 1807, for the adjustment of land titles in Missouri, decided in favor of a claim, and issued a certificate accordingly, this decision settled two points, viz: first, that the claimant was the proper person to receive the certificate; and second, that the title so confirmed was better than any other Spanish title. It is maintained that the commissioners acting under the act referred to have confirmed the same tract of land to two different individuals. Hence it may be said of each claimant, that he was the proper person to receive the certificate, and that his title confirmed by the commissioners is better than any other Spanish title. This being so, it would seem that priority in the act of confirmation, or the relative merits of the two titles, must give the rule for ascertaining which of them shall prevail. We do not consider that the case of Landes v. Brant furnishes any ground by which it can be maintained that the confirmation to Gratiot was a superior title to that conferred on Jeannette by her confirmation. A confirmation under the act of 1807 is conclusive against the U. States, and is also conclusive against all those who did not file notices of their claims prior to the 1st of July, 1808, for the 5th section of the act of 1807 bars and makes void the rights of all those neglecting so to do. The claim of Clamorgan, which was the subject of litigation in the suit of Landes v. Brant, was confirmed in 1811, and being conclusive against the United States, the con-

firmation was also conclusive against all Spanish claims, notice of which had not been given to the recorder prior to the 1st July, 1808. It not appearing that any other claim had been preferred to the tract confirmed to Clamorgan, the court was well warranted in employing the language used on that occasion for all other claims to the tract being void and made of no avail in law or equity, and the confirmation being, in the language of the act, final against the United States, the court might well say that the claimant was the proper person to receive the certificate, and that the title so confirmed was better than any other Spanish title. How different are the circumstances of the case now under consideration from those of that of Landes v. Brant. The claim of Jeannette was filed with the recorder before that of Gratiot, and was confirmed by the board only the day after the confirmation made to him. Both confirmations were made under the 2d section of the act of 1807, and as by that section no tract was to be confirmed that was claimed by another, we should regard the two confirmations as leaving the relative merits of the two titles as they stood before any confirmation. The law manifesting this case for the rights of third parties, there is no warrant for the inference that the mere circumstance of one claim being examined and confirmed a day before the other, should give it a conclusive preference. In providing that a tract claimed by any other person should not be confirmed, the law seems to have contemplated that the commissioners should not decide on the relative merits of two claims, but having confirmed both of them, the question of superiority is left open for the courts. It must be borne in mind that by repeated decisions of the Supreme Court of the United States the legal title or the fee did not pass from the government by a confirmation of the commissioners under the act of 1807. So this is not the case of an elder against a junior patent in an action of ejectment, but it is one presenting the relative merits of two inchoate or equitable titles. In the case of Carmichael v. Brisler, 8 Martin's La. Rep. 727, there were two confirmations for the same tract of land. The court, speaking of the confirmation of the plaintiff, said the confirmation of his claim by the land commissioners had the effect of perfecting his little against the general government, but leaves it to its original value when placed in opposition to the claim and title of an individual. To the same effect is the case of Sanchez and wife v. Gonzales, 11 Martin, 212.

From the evidence preserved in the bill of exceptions, to which no objection was taken, it is obvious that the claim of the plaintiffs in point of equity cannot bear the least examination. In comparison with that of the defendant, it has not the least semblance of justice. The conduct of the mother of plaintiffs, as administratrix of Joseph Gratiot, a great many years ago, when the details of the transaction were comparatively fresh in the recollection of the parties, in relinquishing all claim to the tract in dispute as origin-

ating in mistake, and taking a deed for that really belonging to Flore, must be decisive as to the superiority of the equity of the defendants. Although the mother by her deed could not alien the estate of her children derived from their father, and although it may be inoperative for that purpose, yet the transaction is of great force in determining the relative merits of the claims of the two parties. The finding of the facts embodied in the instructions given by the court clearly establishes the superiority of the equity of the defendants. Indeed the plaintiffs seem to rely solely on the dry technical point that their confirmation was prior in point of time to that of the defendants—a view of the case in which we do not acquiesce.

As to the objection taken that Jeannette was dead when the claim was filed in her name, and consequently that the confirmation to her was void, we may remark, that the same point was made in the case of Mercier v. Letcher, 22 Mo. Rep., and it was determined that the circumstance of a claim being presented in the name of a dead man, no conveyance from him being shown, did not avoid the confirmation, but that it enured to the benefit of his heirs. The judgment is affirmed, the other judges concurring.

WM. SCOTT.

And thereafter, at the March term, in the year one thousand eight hundred and fifty-seventh, and on the 12th day of June, in said year, a bond in behalf of said plaintiffs was filed in this cause, which is as follows, to wit:

Bond.

Know all men by these presents, that we, Pierre A. Berthold, as principal, and Ed. Walsh, as security, both of the city and county of St. Louis, and State of Missouri, are held and firmly bound unto James McDonald and Mary McCree, in the sum of five hundred dollars, lawful money of the United States, to the payment of which, well and truly to be made, we bind ourselves and our respective heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this twelfth day of June, 1857.

The condition of the above obligation is such, that whereas Pierre A. Berthold, Charles P. Chouteau, Charles F. F. de Montholon, and Mary Victoria, his wife, Isabella de Munn, Eliza H. Gratiot, William Henry Child, Louise A. Kingsbury, and Jules C. Kingsbury, have sued out a writ of error from the Supreme Court of the United States directed to the supreme court of the State of Missouri, in a certain cause wherein they are plaintiffs, and the said James McDonald and Mary McCree are defendants in error: Now if the plaintiffs in error shall prosecute their said writ of error with effect, and answer all damages and costs if they fail to make

their plea good, then this obligation shall be void; otherwise to remain in force.

PIERRE A. BERTHOLD, [SEAL.]
EDWD. WALSH, [SEAL.]

Approval endorsed on Bond.

This bond is approved.

WILLIAM SCOTT,
Presiding Judge of the Supreme Court within and for the State of Missouri.

THE STATE OF MISSOURI, *ss:*

I, William S. Glanville, clerk of the supreme court of said State, at St. Louis, certify that the foregoing is a full, true, and perfect transcript of the record and proceedings in the case of Pierre A. Berthold and others against James McDonald and Mary McCree, decided in the supreme court aforesaid, at the October term, A. D. 1856, as fully as the same now remain of record and on file in my office.

In testimony whereof, I hereunto set my hand and the seal of said court, at office in St. Louis, this 23d day of July, A. D. 1857. [SEAL.]

WM. S. GLANVILLE, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the supreme court of the State of Missouri, greeting: [SEAL.]

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Missouri, before you, at the October term, 1856, between Pierre A Berthold, Charles P. Chouteau, Charles F. F. De Montholon, and Mary Victoria, his wife, Isabella De Mun, Eliza H. Gratiot, William Henry Child, Louise A. Kingsbury, and Jules C. Kingsbury, plaintiffs, and James McDonald and Mary McCree, defendants, a manifest error hath happened to the great damage of the said plaintiffs, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December

next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court, this twelfth day of June, in the year of our Lord one thousand eight hundred and fifty-seven. Issued at office in the city of St. Louis, under the seal of the circuit court of the United States for the districts of Missouri, the date last above written.

BEN. F. HICKMAN,
Clerk Ct. Ct. U. S. Mo. dis.

Allowed by me:

WILLIAM SCOTT,
Presiding Judge of the Supreme Court of the State of Missouri.

THE STATE OF MISSOURI, *ss:*

In obedience to the commands of the foregoing writ, I herewith forward to the Supreme Court of the United States, at Washington city, District of Columbia, a full, true, and perfect transcript of the record and proceedings in the case of Pierre A. Berthold and others, plaintiffs in error, against James McDonald and Mary McCree, defendants in error, as fully as the same now remain of record and on file in my office.

In testimony whereof, I hereunto set my hand and the seal of [SEAL.] said supreme court, at office in the city of St. Louis, in said State, this 23d day of July, A. D. 1857.

WM. S. GLANVILLE,
Clerk Supreme Court held at St. Louis, State of Missouri.

United States of America, to James McDonald and Mary McCree, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein Pierre A. Berthold, Charles P. Chouteau, Charles F. F. De Montholon, and Mary Victoria, his wife, Isabella De Mun, Eliza H. Gratiot, William Henry Child, Louise A. Kingsbury, and Jules C. Kingsbury are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of

error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable William Scott, presiding judge of the supreme court of the State of Missouri, this twelfth day of June, 1857.

WILLIAM SCOTT.

Copy served June 13, 1857.

MARY McREE &
JAMES McDONALD,
By C. GIBSON, *their Att'y.*

[Endorsed:] Pierre A. Berthold and others vs. James McDonald and Mary McCree. Citation.

next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court, this twelfth day of June, in the year of our Lord one thousand eight hundred and fifty-seven. Issued at office in the city of St. Louis, under the seal of the circuit court of the United States for the districts of Missouri, the date last above written.

BEN. F. HICKMAN,
Clerk Ct. Ct. U. S. Mo. dis.

Allowed by me:

WILLIAM SCOTT,
Presiding Judge of the Supreme Court of the State of Missouri.

THE STATE OF MISSOURI, *ss:*

In obedience to the commands of the foregoing writ, I herewith forward to the Supreme Court of the United States, at Washington city, District of Columbia, a full, true, and perfect transcript of the record and proceedings in the case of Pierre A. Berthold and others, plaintiffs in error, against James McDonald and Mary McCree, defendants in error, as fully as the same now remain of record and on file in my office.

In testimony whereof, I hereunto set my hand and the seal of said supreme court, at office in the city of St. Louis, in said State, this 23d day of July, A. D. 1857.

[SEAL.]

WM. S. GLANVILLE,
Clerk Supreme Court held at St. Louis, State of Missouri.

United States of America, to James McDonald and Mary McCree, greeting:

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error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable William Scott, presiding judge of the supreme court of the State of Missouri, this twelfth day of June, 1857.

WILLIAM SCOTT.

Copy served June 13, 1857.

MARY McREE &
JAMES McDONALD,
By C. GIBSON, *their Att'y.*

[Endorsed:] Pierre A. Berthold and others vs. James McDonald and Mary McCree. Citation.